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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.		
09/904,989	07/13/2001	Neil A. Cooper	1376-0100820	3444		
34456	7590	07/10/2009	EXAMINER			
LARSON NEWMAN & ABEL, LLP 5914 WEST COURTYARD DRIVE SUITE 200 AUSTIN, TX 78730				CAO, DIEM K		
ART UNIT		PAPER NUMBER				
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07/10/2009		PAPER				

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte:* NEIL A. COOPER

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Appeal No. 2008-003092  
Application 09/904,989  
Technology Center 2100

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Mailed: July 10, 2009

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Before DALE SHAW *Chief Appeals Administrator*  
SHAW, *Chief Appeals Administrator*.

ORDER REMANDING TO EXAMINER

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This application was electronically received by the Board of Patent Appeals and Interferences (BPAI) on April 16, 2008. A docketing notice was mailed to Appellants on May 1, 2008. A further review of the application has revealed that it is not ready for decision consideration by a

Appeal No. 2008-003092  
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BPAI judicial panel. Accordingly, the application is herewith being remanded to the Examiner to address the following matter.

### APPEAL BRIEF, APPEALED CLAIMS

Appellant has not appealed all rejected claims. Specifically, a review of the Grounds of Rejection on the record finds that rejections are outstanding for the following pending claims: 1, 3-7, 10-11, 12-14, 16, 18-21, 31, and 35-36. The rejected claims that have not been appealed and/or argued for appeal are claims 3-7, 10-11, 12, 14, 18-21, and 35-36.

### DISCUSSION

The Board of Appeals and Interferences (Board), in *Ex parte Ghuman*, <http://www.uspto.gov/web/offices/dcom/bpai/prec/rm081175.pdf> (BPAI May 14, 2008) (precedential), held that in appeals where rejected claims are expressly withdrawn, or are implicitly withdrawn by not presenting arguments in support of patentability, the Board will remand (or return) the application to the Examiner with instructions to cancel the expressly or implicitly withdrawn claims. *See also Manual of Patent Examining Procedure* (MPEP) § 1215.03 (8<sup>th</sup> ed. Rev. 7, Sept 2008).

**CONCLUSION**

Accordingly, it is

ORDERED that this application be remanded to the Examiner to:

- 1) to enter a paper canceling claims 3-7, 10-11, 12, 14, 18-21, and 35-36;
- 2) upon entry of the paper, to return the application to the Board for the consideration of appealed claims; and
- 3) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

DMS/PEB

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